Court No. 2

Writ Petition No. 652 (M/B) of 2003

Sukh Dev Singh and others …….. Petitioners

Vs.

State of Uttaranchal and others …… Respondents

……

Hon. P.C. Verma, A.C.J.
Hon. Irshad Hussan,J.

Heard Sri Prashant Chandra, learned counsel for the petitioners and learned Standing Counsel.

This writ petition has been filed seeking a writ of certiorari to quash the first information report dated 6.7.2003 contained in Annexure n1to the writ petition and a writ in the of mandamus commanding the opposite parties not to give effect to the impugned F.I.R. and not to arrest the petitioners in furtherance thereof and to continue any prosecution. A direction is further sought for the licencing authority, to forthwith consider and grant the renewal of licences of the petitioners ignoring the pendency of the F.I.R. and pending disposal of the petitioners application for renewal, the arms confiscated by the oposite parties nos. 3 and 4 be got deposited with an authorised and licenced arms dealer so as to prevent damage to the petitioners.

We have gone through the first information report. From the perusal of the writ petition as well as F.I.R., it comes out that the petitioners were having licences of the arms, which expired in the year 1996-98 on various dates. After expiry of the period of licence, the applications for renewal were not moved upto 6.7.2003. When this fact came to the notice of the authorities concerned, police party went to the house which has been shown as the residence of these persons, but found there a tenant named as Sri Anil Mata, who was found in illegal possession of the arms. This fact itself constitutes a cognizable offence, which has been narrated in the first information report. Therefore, from the perusal of the F.I.R., cognizable offence is made out against the petitioners.

Learned counsel for the petitioners cited the judgment of Division Bench M. P. High Court Amrik Chand Saluja Vs. State of M.P. and others(1991-Cri.L.J. 1314) and placed reliance on para 5 of the judgment. We have carefully examined the judgment of the Madhya

Pradesh High Court. The ratio of the judgment of the M.P. High Court is not attracted to the facts and circumstances of the present case as in the present case the licence expired in the year 1996-98 and no effort was made till 6.7.2003 for renewal of the licences. On the other hand, the arms were in possession of other person from whom these were recovered. Therefore, on these facts, sections 25/27 of the Arms Act is directly attracted. Further the recovery of arms from the possession of another person is not disputed and therefore any illegality alleged will not prima facie vitiate the prosecution.

As regards the direction to have the license renewed, it can not be given because there is nothing to show that the authorities concerned have refused to act accoding to the procedure established by law in this regard.

Prayer for disposal of the property i.e. the arms seized in the raid is provided under Chapter XXXIV of the Code of Criminal Procedure and the competent Court will have jurisdiction to pass any appropriate order on an application in this behalf.

Form the above reasons, we are not inclined to entertain the petition. The petition is dismissed.

August 02, 2003 (**P.C. Verma,A.C.J.**) **(Irshad Hussan,J.)**

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